Wall. 87, it was held that a judgment against a bankrupt taken by confession, when the party taking it knew of the insolvency, was an unlawful preference. In *Webb* v. *Sachs,* Fed. Cas. No. 17,325, the court said, "if a debtor, with knowledge of his insolvency, does an act which operates as a preference to one of his creditors, he is presumed to have so intended * * * ; and the additional fact that such debtor was really moved to give such preference for any other or particular reason—does not affect such presumption." Testimony to the contrary is not entitled to much weight; in *Oxford Iron Co.* v. *Slafter,* Fed. Cas. No. 10,637, the court said, "such testimony, though competent, is inherently weak, and can rarely avail against stronger proof which the transaction itself affords." It has been held that the act of bankruptcy is complete if a debtor, knowing himself to be insolvent, executes a deed of trust to secure a creditor on a pre-existing debt, whether such creditor knew of his insolvency or not. *In re Wright Lumber Co.,* 114 Fed. 1011. In the foregoing cases, the alleged act of bankruptcy involved a considerable part of the insolvent's estate, so that the court took cognizance of it. But small payments made in the usual and ordinary course of business by a debtor, though insolvent, are not sufficient to establish an act of bankruptcy. *In re Douglas Coal & Coke Co.,* 131 Fed. 769. *In re Gilbert,* 112 Fed. 951, the court said, "the presumption arising from the transfer of property by an insolvent is affected by the amount of such transfer," and since the preferences complained of would not have increased the assets more than one per cent, the court refused to interfere. If any further reasons were needed to show that a court will not take cognizance of trifles, it may be found in the closing words of the opinion in the principal case. "It is true that there was a dressed doll, the price of which was more extravagant. This was $2.15. Beach testifies that it was 'for a present.' The evidence fails to disclose upon whom this marvel of art and fashionable millinery was bestowed. It, however, appears that Beach is a bachelor—an 'old bachelor,' we may presume—and perhaps the 'dressed doll' made happy the heart of some tiny maiden, whose lovely face and graceful form brought back to the veteran and hapless heart of the alleged bankrupt the memory of features which 'love used to wear,' in the words of Ossian, 'sweet and sad to the soul, like the memory of joys that are gone.'" It seems that the amount of the payment and the proportion it bears to the total liability is a controlling factor in determining whether or not the debtor has committed an act of bankruptcy.

BANKRUPTCY—JURISDICTION OF COURT—SUITS BETWEEN TRUSTEE AND CLAIMANTS OF PROPERTY—SUITS AGAINST TRUSTEE.—One Buck was adjudged a bankrupt and Galloway was appointed trustee. Prior to his adjudication, Buck had entered into several contracts for the purchase of standing timber. He was not financially able to saw the timber and applied to the plaintiff for aid. It was agreed that the plaintiff should let Buck have money from time to time as he needed it for sawing the timber. As a consideration, the plaintiff was to have a lien on all the timber so purchased as well as the lumber made from it. The First National Bank of Elgin attached Buck's

logs, having knowledge of the plaintiff's lien, so it was alleged. It was further alleged that Galloway prevented the consummation of Buck's contract with the plaintiff by wrongfully taking possession of the logs and the lumber, as well as the money received from the sale of lumber, claiming them in his right as trustee. The plaintiff prayed that a lien be declared in its favor upon the property and the funds, and that a foreclosure be had and its claim discharged. *Held,* there should be no foreclosure in the usual acceptation of the term, but that the lien, if any existed, should stand, leaving the trustee to dispose of the property and marshal the assets according to the relative rights of the creditors. *Goodnough Mercantile & Stock Co.* v. *Galloway* (1907), — D. C., D., Ore. —, 156 Fed. Rep. 504.

To the bill there was a demurrer for want of jurisdiction in the district court over the subject-matter. The defendant contended that it was a suit merely for the foreclosure of a mortgage, over which the circuit court had exclusive jurisdiction. The twenty-third section of the bankruptcy act provides that "the U. S. circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees" just as though there had been no adjudication. In the leading case of *Bardes* v. *The Bank,* 178 U. S. 524, the court settled a conflict as to the proper forum for suits by or against trustees. The facts were briefly as follows: The trustee in bankruptcy filed a bill in equity in the U. S. district court sitting in bankruptcy, against the bank and others to set aside a conveyance of goods, and for an accounting. A demurrer to the jurisdiction was sustained. In affirming this ruling, the supreme court said, "had there been no bankruptcy proceedings, the bankrupt might have brought suit in any state court of competent jurisdiction; or, if there was a sufficient jurisdictional amount and the requisite diversity of citizenship existed, * * * he could have brought suit in the circuit court of the United States." In an action of replevin in the U. S. district court by a trustee in bankruptcy to recover a stock of goods alleged to have been conveyed fraudulently, it was held that the court had no jurisdiction. *Mitchell* v. *McClure,* 91 Fed. 621; affirmed in 178 U. S. 539. Nor has the district court jurisdiction to collect assets in the hands of a transferee. *Hicks* v. *Knost,* 178 U. S. 541. But as a court of bankruptcy, it has jurisdiction by summary proceedings to compel the return of property taken from its custody under state process. *White* v. *Schloerb,* 178 U. S. 542. If a creditor, having a lien on property, submits his claim to the bankruptcy proceedings, he cannot afterwards go into a state court to subject property sold under those proceedings to his judgment, even though the bankruptcy sale would not otherwise have affected his lien. *Spilman* v. *Johnson,* 27 Grat. 33. In the *Bardes* case, supra, and others following, the party claimed the property adversely to the bankrupt, while in the principal case, the plaintiff claimed through him. This is the distinction taken in the principal case from the *Bardes* case, and is perhaps a sufficient basis for a decision, which apparently passes upon the validity of a lien. *Mueller* v. *Nugent,* 184 U. S. 1. In *Bryan* v. *Bernheimer,* 181 U. S. 188, the facts were as follows: A. made

an assignment for the benefit of his creditors and nine days later a petition in bankruptcy was filed against him. Afterwards the assignee sold the property to B., who had knowledge of the situation. The petitioning creditors presented another petition praying that B. account to the referee for the goods he bought from the assignee. The district court decreed that B. had no title superior to that of the bankrupt estate, and therefore he should account. On appeal, it was held that the district court, as a court of bankruptcy, had jurisdiction on the theory that B. had no title superior to that of the bankrupt estate. But the supreme court laid stress on the fact that B. consented to the form of the proceeding.

BILLS AND NOTES—NONNEGOTIABLE NOTES—LIABILITY OF INDORSER.—A note, nonnegotiable by reason of a stipulation that the payee should look to certain mortgage security for its payment, was executed and delivered to the defendant by whom it was indorsed to the plaintiff. In an action against the defendant as indorser, it was *held* that the indorser of a nonnegotiable note assumes an obligation to his indorsee or any subsequent holder to pay the amount due as provided in the instrument, according to its tenor (Code Supp. 1902, § 3060—a66), and can be held to no greater liability than that of the maker. *Allison* v. *Hollembeak* (1908), — Ia. —, 114 N. W. Rep. 1059.

In Iowa, prior to the passage of the negotiable instruments act it was held that the indorser of a nonnegotiable instrument became liable to his indorsee, or any subseqent holder, as a maker of the instrument indorsed, no demand or notice being necessary to fix his liability, which was treated as absolute, and not conditional. *Wilson* v. *Ralph,* 3 Iowa 450; *Hall* v. *Monahan,* 6 Iowa 216, 71 Am. Dec. 404; *Billingham* v. *Bryan,* 10 Iowa 317; *Lynch* v. *Mead,* 99 Iowa 66. For a fuller discussion of this subject see 6 MICH. LAW REV. 502.

BONDS—JOINT STOCK ASSOCIATION—NEGOTIABILITY.—Bonds of the Adams Express company, issued in its association name, under its common seal, by its authorized officers and payable to bearer, stipulated that no shareholder "shall be personally liable as partner or otherwise," and that "the same shall be payable solely out of the assets" of the association. In an action of replevin to recover from an innocent purchaser for value, certain coupons originally attached to one of the above bonds it was *held* that the bond was negotiable and plaintiff could not recover. *Hibbs* v. *Brown et al.* (1907), — N. Y. —, 82 N. E. Rep. 1108.

The stockholders of a joint-stock company are personally liable except in so far as such liability may be limited by statute, for the debts of the company precisely as general partners are liable for the debts of the firm. *Moore* v. *Brink,* 4 Hun (N. Y.) 402; *Wells* v. *Gates,* 18 Barb. (N. Y.) 554; *Skinner* v. *Dayton et al.,* 19 Johns. (N. Y.) 513; *Bodwell* v. *Eastman,* 106 Mass. 525; *Raymond* v. *Colton,* 104 Fed. 219. The majority of the court disregard the above principle and base their decision upon the ground that the association contracted as a quasi-corporate entity. Such a conception if once accepted leads readily to the conclusion that the limitation in the bond did not affect its negotiability under the rule that a negotiable instrument must pledge the